

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ABSHIR ABTIDON BARROW,

Civil No. 12-1416 (SRN/SER)

Petitioner,

v.

**REPORT AND
RECOMMENDATION**

ERIC HOLDER, U.S. Attorney General,
JANET NAPOLITANO, Secretary of
Homeland Security, JOHN MORTON,
U.S. ICE Director for Minnesota, and
JOEL L. BROTT, Sherburne County Sheriff or
Warden, Center of Immigration Detention,

Respondents.

Petitioner, an inmate at the Sherburne County Jail in Elk River, Minnesota, commenced this action by filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. [Doc. No. 1.] The matter has been referred to this Court for report and recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1. For the reasons discussed below, it is recommended that this action be dismissed without prejudice.

Petitioner filed his habeas corpus petition on June 14, 2012. After reviewing the petition, the Court determined Petitioner was seeking relief under *Zadvydas v. Davis*, 533 U.S. 678 (2001). The allegations in the petition, however, did not appear to support an actionable *Zadvydas* claim, so Petitioner was ordered to show cause why this action should not be summarily dismissed. (See Order dated June 28, 2012, [Do. No. 4].) Petitioner was instructed specifically to file a response not later than July 20, 2012, and if he failed to do so, he would be deemed to have abandoned this action, and it would be recommended that this case be dismissed summarily pursuant to Fed. R. Civ. P. 41(b).

Petitioner has not filed any response to the order, nor has he offered any excuse for his failure to do so. Petitioner also has not communicated with the Court on this matter at all since his original filing more than two months ago.

In accordance with the Court's prior order, it is no recommended that Petitioner be deemed to have abandoned this action, and that the action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b). *See Henderson v. Renaissance Grand Hotel*, 267 Fed.Appx. 496, 497 (8th Cir. 2008) (unpublished opinion) ("[a] district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order"); *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630-31 (1962) (federal court has inherent authority to "manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases").

Having determined that this action should be summarily dismissed due to abandonment, the Court will further recommend that Petitioner's pending motion for appointment of counsel, (Docket No. 2), be denied summarily.

RECOMMENDATION

Based upon the above, and upon all the records and proceedings herein,

IT IS HEREBY RECOMMENDED that:

1. Petitioner's motion for appointment of counsel, (Docket No. 2), be **DENIED**; and
2. This action be **DISMISSED WITHOUT PREJUDICE**.

Dated: September 7, 2012

s/Steven E. Rau

Steven E. Rau

U.S. Magistrate Judge

Under D. Minn. LR 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by **September 21, 2012** a writing which specifically identifies those portions of this Report to which objections are made and the basis of those objections. Failure to comply with this procedure may operate as a forfeiture of the

objecting party's right to seek review in the Court of Appeals. A party may respond to the objecting party's brief within ten days after service thereof. A judge shall make a de novo determination of those portions to which objection is made. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable to the Court of Appeals.